

ATTACHMENT A
Remarks

Claims 1, 10-26, 30, 31 and 39-67 are pending in the present application. By this Amendment, Applicants have amended claims 1, 19, 24, 53 and 58 in accordance with the Examiner Interview of January 30, 2007. Applicants are grateful for the Examiner extending an Interview to their representative, Mr. Stephen Weyer. In accordance with that Interview, and the discussion to follow, Applicants respectfully submit that the present application is in condition for allowance.

Claims 19-21 were rejected under 35 U.S.C. § 102(b) as being anticipated by Schroder et al. (U.S. Patent No. 5,951,564) (hereinafter "Schroder"). As discussed during the Examiner Interview, Schroder fails to teach or suggest a spacer located between a pair of arms and constructed to move between an upper part and a lower part to limit movement of the upper and lower parts towards each other. It was alleged in the rejection that pad 220 of Schroder is equivalent to the claimed spacer, alleging that the arms in the Schroder device are constructed to move between the upper and lower parts to limit movement of the upper and lower parts towards each other.

In order to more clearly recite the present spacer, by this Amendment, claim 19 has been amended to recite that the spacer is movable relative to the upper arm and the lower arm, further distinguishing the present spacer from that of Schroder's pads 110. For example, referring to the present figures for exemplary purposes only, but in no way to limit the scope of the claimed invention, spacer 70 is movable between arms 48 and 50 (Figure 25) which limit the movement of the upper part 216 and lower part 240 (Figure 37) towards each other.

Based on the foregoing, Applicants respectfully submit that Schroder fails to anticipate claims 19-21.

Claims 1, 10-12, 17, 18, 24, 25, 30, 31, 39-42, 45-54, 56-59, 61-64, 66 and 67 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Schroder in view of Elberg et al. (U.S. Patent No. 6,440,169) (hereinafter "Elberg"). It was alleged, with respect to claims 1, 24, 53 and 56, that Schroder teaches all limitations, except for an intervertebral implant. The Examiner alleged that Elberg discloses the claimed implant.

Claim 1 (currently amended) recites an instrument for inserting an intervertebral implant in combination with the implant. During the Examiner Interview, the Examiner agreed that claim 1 (currently amended) is not anticipated by or obvious in view of the prior cited art.

Claim 24 (currently amended) has been amended in a similar manner as claim 1 (currently amended) and, therefore, claim 24 (currently amended) recites allowable subject matter over the prior art as claim 1 (currently amended).

Based on the foregoing, Applicants respectfully submit that claim 24 and dependent claims 25 and 26 are not obvious in view of Schroder in view of Elberg.

With regard to method claims 30, 41, 46, 48 and 63, Applicants respectfully submit that the prior art fails to teach or suggest the claimed method, which necessarily includes the insertion of an intervertebral implant having an upper part and a lower part into the intervertebral space.

With regard to claims 53 and 58, Schroder in view of Elberg fails to teach or suggest an instrument for inserting into an intervertebral space an implant having an upper and lower part comprising a spacer located between the upper and lower arms

movable into a space between the upper and lower parts to limit movement of the upper and lower parts towards each other. Like claim 19, claims 53 and 58 have been amended to recite that the spacer is movable relative to the upper and lower arms. Applicants therefore respectfully submit that claims 53 and 58 are allowable for at least the same reasons as claim 19.

Based on the foregoing, Applicants respectfully submit that Schroder in view of Elberg fails to make obvious claims 1, 10-12, 17, 18, 24, 25, 30, 31, 39-42, 45-54, 56-59, 61-64, 66 and 67.

In view of the foregoing, Applicants respectfully submit that the present application is in condition for allowance.

END OF REMARKS